

1 *E-filed on* 9/8/06

2
3
4
5
6
7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION
11

12 IN RE CYGNUS TELECOMMUNICATIONS
13 TECHNOLOGY, LLC, PATENT
LITIGATION

14
15 THIS ORDER RELATES TO:
All Actions

No. MDL-1423
This Order Applies to All Actions


C-02-00142 RMW
C-02-00145 RMW
C-02-05437 RMW
C-03-03594 RMW
C-03-03596 RMW
C-03-03378 RMW
C-03-04003 RMW
C-03-05758 RMW
C-04-01791 RMW
C-04-03001 RMW
C-04-03365 RMW
C-04-04247 RMW
C-04-04359 RMW
C-06-03843 RMW
C-06-04295 RMW

16
17
18
19
20
21
22 ORDER DENYING CYGNUS'S MOTION TO
EXCLUDE EVIDENCE CONSIDERED
DURING REEXAMINATION
23

24
25 Plaintiff Cygnus Telecommunications Technology, LLC moves for summary judgment that
26 references considered in the recent reexamination of the patents-in-suit may not be relied upon by
27 the defendants here when asserting invalidity of the patents-in-suit. It is unclear from the motion the
28 precise basis on which Cygnus seeks to exclude the evidence. Proceedings before the U.S. Patent

1 and Trademark Office are not binding on the courts.¹ See *Quad Envtl. Techs. Corp. v. Union*
2 *Sanitary Dist.*, 946 F.2d 870, 875-76 (Fed. Cir. 1991). If the basis of Cygnus's motion is evidentiary
3 rules, its timing is governed by the prior orders scheduling claim construction and related summary
4 judgment motions, and any such motion to exclude evidence will be considered at the November 20,
5 2006 hearing. Cygnus's motion is denied, though without prejudice to refile as to any specific
6 evidence which defendants seek to introduce at any evidentiary hearing.

7
8
9 DATED: 9/8/06



RONALD M. WHYTE
United States District Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28 ¹ Cygnus clarified at oral argument that it was not seeking to exclude the evidence on the basis that
the USPTO proceedings bound this court.

1 A copy of this order was mailed on _____ to:

2 **Counsel for Plaintiff:**

3 John P. Sutton
2421 Pierce Street
4 San Francisco, CA 94115-1131

Kieran Patrick Fallon
436 SW 8th Street
Miami, FL 33130-2814

5 **Counsel for Defendants:**

6 Alan M. Weisberg, Steven M. Greenberg
Christopher & Weisberg, P.A.
7 200 E. Las Olas Avenue
Suite 2040
8 Fort Lauderdale, FL 33301

Matthew Francis McGahren
Baum & McGahren
6171 Crooked Creek Road
Norcross, GA 30092

9 John C. Carey
Rodriguez Greenberg & Paul
10 1395 Brickell Ave, Suite 700
Miami, FL 33131

Lori D. Greendorfer, Maxim H. Waldbaum
Schiff Hardin LLP
623 Fifth Avenue
28th Floor
New York, NY 10022

11 Felice B. Galant, Gregory B. Wood
12 Fulbright & Jaworski L.L.P.
865 South Figueroa Street
13 Twenty-Ninth Floor
Los Angeles, CA 90017

Thomas T. Tamlyn
Yeskoo Hogan & Tamlyn, LLP
535 Fifth Avenue
New York, NY 10017

14 Joseph P. Zammit
15 Fulbright & Jaworski
666 Fifth Avenue
16 New York, NY 10103

Peter S. Canelias
Law Offices of Peter S. Canelias
420 Lexington Avenue
Suite 2148
New York, NY 10170

17 John F. Mardula, Jon L. Roberts
18 Roberts Mardula & Wertheim, LLC
11800 Sunrise Valley Drive
Suite 1000
19 Reston, VA 20191-5302

David T. Alexander
MBV Law LLP
855 Front Street
San Francisco, CA 94111

20 Richard B. Sheldon
Mitchell Silberberg & Knupp LLP
21 11377 West Olympic Boulevard
Los Angeles, CA 90064-1683

Jon M. Gibbs
Akerman, Senterfitt
255 S. Orange Avenue
Suite 1700
Post Office Box 0231
Orlando, FL 32802-0231

22 Jeffrey L. Silvestrini, Brian F. Roberts
23 Cohne Rappaport & Segal
P.O. Box 11008
24 Salt Lake City, UT 84147-0008

Elizabeth E. Green, R. Scott Shuker
Gronek & Latham, LLP
390 N. Orange Avenue
Suite 600
Orlando, FL 32801

25 Raymond J. Etcheverry
Parsons, Behle & Latimer
26 One Utah Center
201 South Main Street,
27 Suite 1800, Post Office Box 45898
Salt Lake City, UT 84145

Meredith L. Caliman
Meredith L. Caliman Law Offices
3858 Carson Street, Suite 120
Torrance, CA 90503-6705

Gregory J. Nelson
Nelson & Roediger
3333 E Camelback Road, Suite 212
Phoenix, AZ 85018

1 Peter Neil Greenfeld
Greenfeld Law Group
2 3333 E Camelback Road, Suite 212
Phoenix, AZ 85018-2324

3 Matthew McGahren
4 Baum, McGahren & Chiu, LLC
6171 Crooked Creek Road
5 Norcross, GA 30092

Courtesy Copy:

Clerk of the Panel
Judicial Panel on Multidistrict Litigation
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Room G-255, North Lobby
Washington, DC 20002-8004

6
7 Counsel for plaintiff is responsible for ensuring that involved attorneys not on the above service list
8 receive a copy of this order, if necessary, and shall inform the court of any omissions.
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28